

KENTUCKY PERSONNEL BOARD
MINUTES OF JUNE 16, 2014

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on, June 16, 2014, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David F. Hutcheson, Jr., Member
Donald W. "Don" Blevins, Member
Ramona Herndon, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

David B. Stevens, Member
Tommy W. Chandler, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD MAY 9, 2014**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Blevins moved to approve the minutes, as submitted. Ms. Herndon seconded and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised that after last month's Board meeting, he and Mr. Crocker served on a panel for the Kentucky Association of Administrative Adjudicators (KAAA) training session. The interaction between hearing officers and agency heads, among other matters, was discussed.

Mr. Sipek stated that he and Mr. Crocker also attended 13B hearing officer training offered by the Attorney General's office and an employment law seminar at the University of Kentucky.

Mr. Sipek stated the Board's election process is almost complete. Ballots will be accepted until close of business on June 13, 2014. The Board will have the results of the election from the Ethics Commission before the next Board meeting. Chairman Sapp inquired how the results will be announced. Mr. Sipek stated that an announcement will be posted on the website, and the new employee members will be contacted.

Ms. Sipek reported that nine hearing officer contracts have been approved by the Governor's office; and one hearing officer's contract will be postponed until later in the year. Mr. Sipek advised that the Board is in good fiscal shape ending this year and heading into next year. As far as scheduling, the Board is doing its best to get cases heard and to prioritize issues. Chairman Sapp stated that the Board's interest in not letting cases linger is a priority and applauds the staff's efforts. Chairman Sapp is aware that delays and continuances by either party are factors in causing delays. Mr. Sipek added that scheduling is a balancing act and the parties want to make sure they are ready and have everything they need before proceeding to a hearing.

4. PERSONNEL CABINET'S REPORT - NONE

Mr. Sipek advised that the Personnel Cabinet is not available to present their report. Chairman Sapp then called the parties forward for oral arguments.

5. ORAL ARGUMENTS

A. Ronyeld Shirley v. Justice and Public Safety Cabinet

Present for oral arguments were Appellant, Ronyeld Shirley, and counsel for Appellee, the Hon. Stafford Easterling. After presenting oral arguments, the parties answered questions from the Board.

B. Christopher Thomas v. Energy and Environment Cabinet

Present for oral arguments were Appellant, Christopher Thomas, and counsel for Appellee, the Hon. Cannon Armstrong. After presenting oral arguments, the parties answered questions from the Board.

C. Brenda Zahn v. Cabinet for Health and Family Services

Present for oral arguments were counsel for Appellant, the Hon. Bob Bullock, and counsel for Appellee, the Hon. Jennifer Wolsing. After presenting oral arguments, the parties answered questions from the Board.

6. **CLOSED SESSION**

Mr. Hutcheson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Blevins seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (11:20 a.m.)

Mr. Hutcheson moved to return to open session. Ms. Herndon seconded and the motion carried 5-0. (1:27 p.m.)

7. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. **Ronyeld Shirley v. Justice and Public Safety Cabinet (2013-249)**

Mr. Blevins moved to note Appellant's exceptions and oral arguments and to defer this matter to the next Board meeting. Ms. Herndon seconded and the motion carried 5-0.

B. **Christopher Thomas v. Energy and Environment Cabinet (2013-291)**

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response and oral arguments and to defer this matter to the next Board meeting. Ms. Herndon seconded and the motion carried 4-0, with Mr. Gillis recusing due to a personal relationship with a witness.

C. **Brenda Zahn v. Cabinet for Health and Family Services (2013-219)**

Mr. Gillis moved to note Appellee's exceptions, Appellant's response and oral arguments and to defer this matter to the next Board meeting. Mr. Hutcheson seconded and the motion carried 5-0

D. Laura Dennis v. Justice and Public Safety Cabinet (Corrections) (2013-018)
Deferred from May meeting

Mr. Hutcheson moved to note Appellee's exceptions and motion to reopen the record and oral arguments and to accept the Final Order dismissing the appeal as attached to the minutes and to **DENY** Appellee's motion to reopen the record. Ms. Herndon seconded and the motion carried 5-0.

E. Brian Easton v. Education and Workforce Development Cabinet (2013-061)
Deferred from May meeting

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral arguments and to accept the Final Order, as attached to the minutes, sustaining the appeal to the extent that Appellant's suspension is vacated and a written reprimand be issued instead. Mr. Blevins seconded and the motion carried 4-1, with Mr. Gillis opposing.

F. Robert Blackburn v. Justice and Public Safety Cabinet (Corrections)
(2013-141)

Mr. Gillis moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 5-0.

G. John Odom v. Education and Workforce Development Cabinet (2013-233)

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response, and to defer this matter to the next Board meeting. Mr. Blevins seconded and the motion carried 5-0.

H. Joann Searcy v. Justice and Public Safety Cabinet (Corrections) (2013-059)

Mr. Blevins moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 5-0.

I. Elizabeth Burton v. Department of Military Affairs (2013-097)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

J. Logan Cecil v. Transportation Cabinet (2013-266)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 5-0.

K. Wesley Jackson v. Transportation Cabinet (2013-063)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 5-0.

L. Sheri Leach v. Transportation Cabinet (2013-172)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 5-0.

Show Cause Orders - Appeals Dismissed – No Response Filed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

- M. Elizabeth Charlton v. Cabinet for Health and Family Services
- N. Rosemary Ryan v. Justice and Public Safety Cabinet (Corrections) (4 appeals)

Mr. Gillis moved to accept the recommended orders dismissing the appeals for failure to timely prosecute as the Appellants had not responded to the show cause orders. Ms. Herndon seconded and the motion carried 5-0.

8. WITHDRAWALS

Mr. Blevins moved to accept the following withdrawals of appeals *en bloc* and dismiss the appeals. Mr. Hutcheson seconded and the motion carried 5-0.

- A. Wayne Baker v. Finance and Administration Cabinet
- B. Gerard Buynak v. Tourism, Arts and Heritage Cabinet (Fish & Wildlife)
- C. William Coleman v. Education and Workforce Development Cabinet
- D. Terri Dickerson v. Justice and Public Safety Cabinet (Corrections)
- E. Bradley Girkey v. Education and Workforce Development Cabinet
- F. Prudy Newton v. Ky. Board of Embalmers & Funeral Directors
- G. Andrew P. Hudak v. Justice and Public Safety Cabinet (Juvenile Justice)
- H. Ruth Pettus v. Kentucky Department of Veterans Affairs

9. **SETTLEMENTS**

- A. Jeremiah Ferran v. Cabinet for Health and Family Services
- B. Jerry Williams v. Justice and Public Safety Cabinet (Juvenile Justice)
- C. Chelsea Fultz v. Cabinet for Health and Family Services
- D. Brenda Holt v. Cabinet for Health and Family Services

Mr. Hutcheson moved to accept settlements "A" and "D" as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Ms. Herndon seconded and the motion carried 5-0.

Mr. Blevins moved to defer settlement "B" to the next meeting of the Board. Mr. Gillis seconded and the motion carried 5-0.

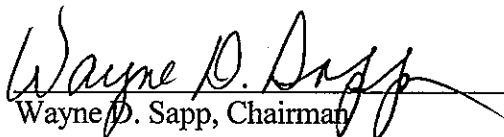
Mr. Hutcheson moved to accept settlement "C" as submitted by the parties, and to sustain the appeal to the extent set forth in the settlement. Ms. Herndon seconded and the motion carried 3-2, with Chairman Sapp and Mr. Blevins opposing.

10. **OTHER**

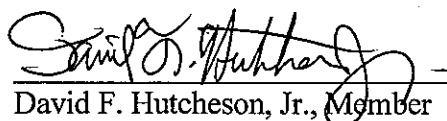
A. Annual Increments for Executive Director and General Counsel

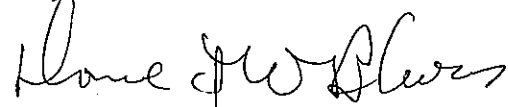
Mr. Blevins moved to give both the Executive Director and the General Counsel a one percent (1%) increment beginning July 1, 2014, which is identical to the raise for state employees approved in the 2014-2016 Biennial Budget. Mr. Gillis seconded and the motion carried 5-0.

There being no further business, Mr. Hutcheson moved to adjourn. Mr. Gillis seconded and the motion carried 5-0. (1:37 p.m.)


Wayne D. Sapp, Chairman


Larry Gillis, Vice Chairman


David F. Hutcheson, Jr., Member


Donald W. Blevins, Member

Ramona Herndon, Member

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-018

LAURA DENNIS

APPELLANT

VS. FINAL ORDER
ALTERING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

** ** *

The Board at its regular June 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 10, 2014, having noted Appellee's exceptions and motion to reopen the record, oral arguments and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Findings of Fact paragraphs 21, 22, 23 and 25 and substitute the following:

21. The Board finds that the sub-par performance as articulated in Recommended Order Attachment A, the disciplinary letter, even standing apart from the unsatisfactory performance of November 12, 2012, is more than enough to sustain the demotion of Appellant. The Board finds and agrees with the Appointing Authority that it simply cannot condone such continued poor performance from a supervisor.

- B. **Renumber** Findings of Fact number 24 to number 22.
- C. **Delete** Conclusion of Law numbers 1 and 2 and substitute the following:

1. The Board concurs with the Hearing Officer's findings that the November 12, 2012 incident was not proven. The Board also concurs with the finding that Appellant's repeated, demonstrably poor performance, as documented in the demotion letter, was proven and, standing alone, supports the demotion. The Board rejects the Hearing Officer's conclusion that it was excessive and erroneous to have demoted the Appellant for the performance problems that were proven merely because one incident of alleged poor work performance, the November 12, 2012 allegation, was not proven. The demonstrably poor work performance over the period of time as outlined in the letter was more than sufficient, the Board concludes, to justify the demotion was neither excessive nor erroneous and was in fact taken with just cause.

- D. **Renumber** Conclusion of Law number 3 to number 2.
- E. **Delete** the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **LAURA DENNIS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-018)** be **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 18th day of June, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Angela Cordery
Laura Dennis
Stephanie Appel

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-061**

BRIAN EASTON

APPELLANT

**FINAL ORDER
SUSTAINING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER AS ALTERED**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
THOMAS O. ZAWACKI, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

The Board at its regular June 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 25, 2014, having considered Appellee's exceptions, Appellant's response, oral arguments of the parties, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Findings of Fact numbers 1 and 2 and substitute the following:

1. Appellant, Brian Easton, has been charged with the lack of good behavior and unsatisfactory performance of duties in that he failed to properly supervise the activities at 601 East Main Street, Frankfort, Kentucky, by allowing contraband in the form of tobacco and a rolling machine; and in failing to ensure that certain pornographic materials were not allowed to remain at that facility.

2. Until April 1, 2012, the Appellant was the Branch Manager over two sections at that facility, one of which involved the GSP inmate program. As of April 1, 2012, the Appellant became the Assistant Director of the Division. In both positions, as the Branch Manager and as the Assistant Director, the Appellant had little or no direct

contact with the inmates at the facility. The Board finds that Appellant in both positions did perform work at the facility at 601 East Main Street.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **SUSTAINED to the extent** stated therein.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 18th day of June, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Rosemary Holbrook
Hon. Paul Fauri